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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,859	09/18/2003	Robert T. Melville	212/518	5764

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CROCKETT & CROCKETT
24012 CALLE DE LA PLATA
SUITE 400
LAGUNA HILLS, CA 92653

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/666,859

Applicant(s)

MELVILLE, ROBERT T.

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5, 7-12 and 14-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5, 7-12 and 14-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-12-07 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,673,507 to Stokes.

Referring to claim 5, Stokes discloses a dual fishing rod holder comprising, a first tube – at 46 or 48, characterized by a proximal section and a distal section – see for example figure 2, the first tube having a bend – see proximate 42 or 42' in figure 2, forming an angle between the proximal section and the distal section – see for example figure 2, a fastener – at 22,23,24,26,28, and the reel/rod support of 112, coupled to the distal section of the first tube – see figure 2, the

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fastener couplable to a first fishing rod – at 112, and adapted to engage a reel of the first fishing rod – see for example figure 2, and a second tube – at the other of items 80, coupled to the proximal section of the first tube and at an angle relative to the distal section of the first tube, the second tube adapted to receive a handle of a second fishing pole – see for example figure 2, wherein the proximal section of the first tube is so sized and dimensions to be inserted into a receiver – at 20-36, on a boat – at 100 – see for example figure 2. Stokes does not disclose the fastener allows the first fishing rod to rotate in any direction and to align itself with drag of a hook and tackle while the boat is trolling. However, these are intended use/functional limitations in an apparatus claim and it is deemed that the device of Stokes is capable of performing these functions in that the fastener – at 22-26, holds the fishing rod to the boat as seen in figure 2 and thus allows the fishing rod to be capable of being moved/rotated into differing positions inside the holders – at 112, or alternatively be rotated by movement of the boat/wind or fish striking the fishing line, and the movement of the fishing rod into various positions allows for the rod to be capable of being aligned with drag of a hook and tackle while the boat is trolling as seen in figure 1.

Referring to claim 18, Stokes discloses a dual fishing rod holder comprising a first tube – at 42-54 or 42'-54', having a proximal section and a distal section – see figures 2-3, the first tube having a bend forming an angle between the proximal section and the distal section – see figures 2-3, a fastener – at 20,22,23,24,26,28 – directly coupled to the distal section of the first tube – see at 48,50 in figures 1-2, the fastener engaging a reel of a first fishing rod – see at 26, to secure the first fishing rod – see figures 1-2, and a second tube – at any of items 80, coupled to the proximal section of the first tube – see figures 1-2, and at an angle relative to the distal section of

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the first tube – see figures 1-3, the second tube adapted to receive a handle of a second fishing pole – see figure 1, wherein the proximal section of the first tube is sized and dimensioned to be inserted into a receiver for the fishing rod holder on a boat – see figures 1-3.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4, 7-8, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,388,774 to Thoemke in view of U.S. Patent No. 5,673,507 to Stokes.

Referring to claim 3, Thoemke discloses a dual fishing rod holder comprising, a tip-down fishing rod holder – at 22-38,70,72, installed on a boat – at B – see figure 1, the tip-down fishing rod holder being substantially L-shaped – see at the combination of 38 and 70-72, having a proximal end and a distal end – see figures 2-3, and the tip-down fishing rod holder being secured at its proximal end to the boat – see at 50-55 in figure 2, and extending rearwardly and at an angle to the boat – see figures 2-3, a fastener – see the cord proximate 32 in figures 2-3, supported from the distal end of the tip-down fishing rod holder – see figures 2-3, by a flexible element – see the loop at the end of the cord in figures 2-3, and a tip-up fishing rod holder – at 86, coupled to the proximal end of the tip-down fishing rod holder – see figures 2-3, disposed at an angle relative to the first fishing rod holder – see figures 2-3, the tip-up fishing rod holder

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adapted to securely receive a handle of a second fishing rod – at 10 – see figure 1, and hold the second fishing rod at a substantial angle relative to the first fishing rod – see figures 1-3, wherein the second fishing rod holder is secured at a distance from the top of the proximal end of the first fishing rod holder – see at 74-84 in figures 1-3. Thoemke does not disclose the fastener is adapted to engage a reel eye of a first reel connected to a first fishing rod and freely suspend the first fishing rod. However, these limitations are intended use/functional limitations in an apparatus claim and it is deemed that the device of Thoemke is capable of performing this function in that as seen in figures 1-3, the cord proximate 32 is located proximate to the reel of the rod – at 20 and therefore can be made to engage the reel. Thoemke further does not disclose the tip-down fishing rod holder is adapted for insertion into a fishing rod handle receiver on a boat. Stokes does disclose the tip-down fishing rod holder – at 20,30, is adapted for insertion into a fishing rod handle receiver on a boat – see at 120 in figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Thoemke and add the rod holder inserted into a rod receiver on a boat of Stokes, so as to securely hold the device to the boat during use.

Referring to claim 7, Thoemke as modified by Stokes further discloses the distance from the top of proximal end of the first fishing rod holder – at 20,30, to the second rod holder – at 80, is fixed – see figure 2 of Stokes. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Thoemke and add the fixed distance between the rod holders of Stokes, so as to make the device rigid and more durable for repeated use.

Referring to claim 8, Thoemke as modified by Stokes further discloses the flexible member – at the loop of the cord of Thoemke, is a cord – see figures 2-3.

Referring to claims 14-15, Thoemke as modified by Stokes further discloses the tip-down fishing rod support is a formed tube – see at 30-36 of Thoemke and the tip-up fishing rod holder is a straight cylindrical tube – at 86 – see figures 1-3 of Thoemke.

Referring to claim 16, Thoemke as modified by Stokes further discloses the flexible member is a strap – see the cord proximate 32 in figures 2-3 of Thoemke.

Referring to claims 4 and 17, Thoemke discloses a dual fishing rod holder comprising a first fishing rod support – at 30,32,36,38, having a proximal section and a distal section – see figures 1-3, wherein the proximal section is formed at an angle relative to the distal section – see at 30-38 in figures 1-3, and the proximal section is adapted to be installed on a boat – at B – see figure 1, a fastener – at the cord proximate 32 in figures 2-3, coupled to the distal section of the fishing rod support – see figures 2-3, a fishing rod holder – at 86, coupled to and substantially parallel to the proximal section – at 30 – see figure 2, the fishing rod holder adapted to securely receive a handle of a second fishing rod – at 10 – see figure 1, and hold the second fishing rod at a substantial angle relative to the first fishing rod – see figure 1, wherein the second fishing rod holder is secured at a fixed distance from the top of the proximal end of the first fishing rod holder – see at 38,86 in figures 2-3. Thoemke does not disclose the fastener is adapted to engage a reel eye of a first reel connected to a first fishing rod and freely suspend the first fishing rod. However, these limitations are intended use/functional limitations in an apparatus claim and it is deemed that the device of Thoemke is capable of performing this function in that as seen in figures 1-3, the cord proximate 32 is located proximate to the reel of the rod – at 20 and therefore can be made to engage the reel. Thoemke further does not disclose the tip-down fishing rod holder is adapted for insertion into a fishing rod handle receiver on a boat. Stokes does disclose

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the tip-down fishing rod holder – at 20,30, is adapted for insertion into a fishing rod handle receiver on a boat – see at 120 in figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Thoemke and add the rod holder inserted into a rod receiver on a boat of Stokes, so as to securely hold the device to the boat during use. Thoemke does not disclose the fishing rod holder is fixed to the proximal section. Stokes further discloses the fishing rod holder – at 80, is fixed to the proximal section – at 20,30 – see figure 2.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Thoemke and add the fixed distance between the rod holders of Stokes, so as to make the device rigid and more durable for repeated use.

Referring to claim 10, Thoemke as modified by Stokes further discloses the fastener comprises a cord and a hook – see the cord – proximate 32 in figures 2-3 with the hook being the looped portion at the end of the cord.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thoemke as modified by Stokes as applied to claim 3 above, and further in view of U.S. Patent No. 4,485,579 to Hawie. Thoemke as modified by Stokes does not disclose the rod holder is an aluminum or steel cylindrical tube. Hawie does disclose the rod holder is a steel cylindrical tube – see for example column 2 lines 16-38. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Thoemke as modified by Stokes and add the steel tube of Hawie, so as to allow for the device to be made rigid and durable for repeated use.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thoemke as modified by Stokes as applied to claim 11 above, and further in view of U.S. Patent No. 4,876,980 to Bell. Thoemke as modified by Stokes does not disclose the fishing rod support is

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unitary structured. Bell does disclose the fishing rod support – at 28,38-46, is unitary structured – see for example figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Thoemke as modified by Stokes and add the device being unitary structured of Bell, so as to allow for the device to be easily and quickly manufactured.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stokes as applied to claim 5 above, and further in view of Thoemke. Stokes does not disclose the fastener comprises a cord with a hook. Thoemke does disclose the fastener comprises a cord – see proximate 32 in figures 2-3, with a hook – at the looped portion of the cord. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Stokes and add the fastener of Thoemke, so as to allow for the rod to be securely held in place during use.

Response to Arguments

4. Regarding claim 5, the Stokes reference US 5673507 does disclose a fastener – at 22,23,24,26,28, engaging the reel – at the apparatus of 112 as seen in figures 1-3, to support the reel and attached rod – at 112 as seen in figures 1-2. Further, Stokes discloses the fastener – at 22-28, is coupled to the distal section of first tube – at 48,50 as seen in figures 1-2. The limitations of the fastener supported from the distal end of the first tube of the device and the flexible element, the rotation of the rods in any direction and the fastener adapted to engage a reel eye of a first fishing reel are not found in claim 5. Therefore these arguments are moot.

Applicant's arguments with respect to claims 3-4, 7-11 and 14-17 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


David Parsley
Patent Examiner
Art Unit 3643